card or statement of the record of his service, although he may have been unable to obtain other employment in consequence of such refusal by the company.

The duty to give a recommendation or clearance card to a discharged employee is the subject of a note to these cases.

EQUITY PRACTICE—PARTIES—TRUSTEES.—The personal representative of a deceased creditor in a trust deed is a necessary party to a bill in equity to remove a cloud upon the title to the mortgaged property and to subject it to the payment of the debt. The fact that the trustee in the deed is a party to the suit is not sufficient. *Bryan* v. *McCann* (W. Va.), 47 S. E. 143.

Per Miller, J.:

"One of the material questions raised and controverted by the pleadings, and upon which proof was taken and filed is the amount, if any, which is due the estate of Mrs. Foster from C. A. and S. C. McCann upon their notes to her, constituting a part of the assets of decedent's estate. Bryan, trustee, the plaintiff, has no pecuniary or personal interest in the debt. He merely holds the legal title to the property conveyed to him in trust by the trust deed as security for the debt. As a general rule, a trustee's authority over the trust property is defined and limited by the instrument creating the trust, and he should be guided strictly by its provisions. *Atkinson* v. *Beckett*, 34 W. Va. 584, 12 S. E. 717. He is the agent for both the creditor and debtor in the debt for which the trust is given. It is the duty of the trustee to look to the rights and interests of the trust debtor, as well as to those of the trust creditor. He is bound to act impartially betweem them. *Rossett* v. *Fisher*, 11 Gratt. 492; *Livey* v. *Winton*, 30 W. Va. 554, 4 S. E. 451; *Hartman* v. *Evans*, 38 W. Va. 669, 18 S. E. 810. Unless the trustee is authorized to do so by the instrument conferring his authority, under which he acts, he cannot collect the trust funds, and give acquittances or releases therefor. As trustee, he should not be a contesting litigant in the matter of which he is trustee, to contest with the creditor or debtor the amount or validity of the trust debt; but, in equity, he should always be party as trustee. *Turk* v. *Skiles*, 38 W. Va. 404, 18 S E. 561. There must be an administrator to represent it, before an adjudication can be had in court concerning the personal property of an intestate decedent. 15 L. R. A. 491, note; *Smith* v. *Denny*, 37 Mo. 20; *Hays' Ex'r* v. *Hays*, 5 Munf. 418; *Weeks* v. *Jewett*, 45 N. H. 540.

RAILROADS — EASEMENTS — PRESCRIPTION — INJUNCTION—JURISDICTION OF FEDERAL COURTS.—In the case of the *Louisville & Nashville Railroad Company* v. *Smith*, 128 Fed. 1, the Circuit Court of Appeals for the Fifth Circuit affirms certain propositions which together form the latest milestone in the steady progress of the equitable jurisdiction of the federal courts. They are as follows:

1 Where a railroad company has the charter power to acquire a right of way for railroad purposes, and it enters upon lands with the consent or license of the owner, and builds its railroad, expending money in the prosecution of the work, and holds it continuously for a period of more than 40 years, running trains over it daily, and exercising the acts of ownership that are necessary to keep

the roadbed in proper condition during all that time, it acquires a right of way by prescription.

2. Equity has jurisdiction by injunction to prevent interference with easements or their destruction, and a bill by a railroad company against a number of defendants, alleging that as owners of lands through which its road runs they are interfering with its right of way, denying its right to the same, threatening suits, and preventing it from keeping its roadbed in repair, states a cause of action for equitable relief.

3. In a suit by a railroad company in a federal court against a number of landowners to enjoin threatened interference with its use of its right of way through their lands the value of the right sought to be protected, and not the value of the land constituting the right of way across the lands of defendants, constitutes the value in controversy for jurisdictional purposes

4. Different landowners may be joined as defendants in a single suit by a railroad company to enjoin interference with its use of its right of way and with the maintenance of its track, where the right asserted is the same against each defendant.

Upon the last point, Shelby, Circuit Judge, says :

"There has been much controversy in recent years as to the circumstances under which a plaintiff may join many defendants in a suit in equity to prevent a multiplicity of suits. Some courts have held that Mr. Pomeroy (1 Pom. Eq. Jur. secs. 245-273) has unduly enlarged the rule. *Tribette* v. *Railroad Company*, 70 Miss. 182, 12 South. 32, 19 L. R. A. 660, 35 Am. St. Rep. 642; *Turner* v. *Mobile*, 135 Ala. 73, 33 South. 132. But there are other authorities that fully indorse the views of the text-writer. Harlan, Circuit Justice, in *Osborne* v. *Wisconsin Railway Co.* (C. C.), 43 Fed. 825; *De Forest* v. *Thompson* (C. C.), 40 Fed. 375; *Ritchie* v. *Sayers* (C. C.), 100 Fed. 520; *Keese* v. *City of Denver*, 10 Colo. 113, 15 Pac. 825; *Carlton* v. *Newman*, 77 Me. 408, 1 Atl. 194. If the position taken by Pomeroy and the authorities last cited be correct, there is no misjoinder of parties defendant, because equity would have jurisdiction of the case on the sole ground of preventing a multiplicity of suits. But in this case we are not required to take either side in that controversy. Here the jurisdiction in equity, as we have seen, is not dependent alone on preventing a multiplicity of suits. There are other and distinct grounds for equitable interference. The complainant seeks by injunction to prevent an obstruction to and interference with its right of way under circumstances, as we have shown, that confer equity jurisdiction from the inherent nature of the case, aside from the fact that the interposition of the equity court may prevent a multiplicity of suits. As to the alleged misjoinder of the defendants, the question here is, when may defendants be joined in a suit by a complainant, the bill stating other grounds for equitable interference, and not depending for its equity on the doctrine of preventing a multiplicity of suits? The rule, we think, is plain that when the matter in litigation is entire in itself, and does not consist of separate things, having no connection with one another, it is not necessary that each defendant should have an interest in the suit coextensive with the claim set up by the bill. He may have an interest in a part of the matter in litigation instead of the whole. There can

be no reason why one complainant, who has the same right against a number of persons—that right being such that it confers equity jurisdiction—may not have that right determined as to all the parties interested by one suit. The plaintiff's claim is an entirety. It is a suit to protect a single indivisible right of way. The right claimed is exactly the same against each one of the defendants. All of the defendants are interfering in the same manner with the same right of way. As the case is one on the averments of the bill within the jurisdiction of a court of equity, there can be no reason for requiring the complainant to file 15 bills, one against each defendant. It is no objection that the several defendants each have a right to make a separate defense against the claim of the complainant, provided the complainant's assertion of right is the same against each, and there is only one general question to be settled, which pervades the whole case. It is enough if the purpose of the bill is to establish a single right between the complainant and the several defendants. *Hyman* v. *Wheeler* (C. C.), 33 Fed. 629; *Pacific Live Stock Co.* v. *Hanley* (C. C.), 98 Fed. 327; *Smith* v. *Bivens* (C. C.), 56 Fed. 352; *Nashville etc. Railroad* v. *M' Connell* (C. C.), 82 Fed. 65; *Union Mill & Mining Co.* v. *Dangberg* (C. C.), 81 Fed. 73; *Pillsbury-Washburn Mills* v. *Eagle*, 86 Fed. 608, 30 C. C. A. 386, 41 L. R. A. 162; *Prentice* v. *Duluth Forwarding Co.*, 58 Fed. 437, 7 C. C. A. 293; *Sing Lung* v. *Jackson* (C. C.), 85 Fed. 502; *American Central Ins.* v. *Landau*, 56 N. J. Eq. 513, 39 Atl. 400; *Cadigan* v. *Brown*, 120 Mass. 493; Kerr on Injunctions (Ed. 1880) 522."

NATIONAL BANKS—DIRECTORS—LIABILITY TO DEPOSITORS.—1. The acceptance of money from a depositor by a national bank implies that the directors will conform to the conditions named in the relation of depositor and bank, as defined in the opinion, and the law governing the custody and disposition of deposits enters into and forms a part of the relation thus created between the depositors and the directors, thereby establishing a direct privity of relation between directors and depositors.

2. Directors of a bank are answerable in an action directly to the depositors, where the bill shows that the deposits were disposed of in sums and to persons forbidden by law and were used to pay dividends, when no dividends had been earned.

3. While the legal machinery of the national banking law provides for a receivership in the nature of administration, there is no provision which exempts an insolvent bank or its directors from suit by depositors, and although a receiver might have brought the action stated in the bill, his right to bring such action is not inclusive, and, to the extent that the directors are responsible especially to the depositors, the latter have an action adequate to the fulfillment of the obligation due the depositors by the directors.

4. The case stated in the bill is of equitable cognizance, and is the proper medium to obtain the enforcement of the rights of depositors, individually or as a class, against directors, individually and as a class, the court following *Briggs* v. *Spaulding*, 141 U. S. 131. The court holds that the bill is not multifarious and that the obligations of the directors and their breach are set forth with sufficient certainty. The suit also survives against the representatives of deceased directors, because it is a suit on contract and not in tort. *Boyd* v.